

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AGIS SOFTWARE DEVELOPMENT, LLC, §
§
Plaintiff, § Case No. 2:17-CV-0513-JRG
§ (LEAD CASE)
§
v. §
§ **JURY TRIAL DEMANDED**
HUAWEI DEVICE USA INC., ET AL., §
§
Defendants. §
§

AGIS SOFTWARE DEVELOPMENT, LLC, §
§
Plaintiff, § Case No. 2:17-CV-0515-JRG
§ (CONSOLIDATED CASE)
§
v. §
§ **JURY TRIAL DEMANDED**
LG ELECTRONICS INC., §
§
Defendant. §
§

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S SUR-REPLY IN
OPPOSITION TO DEFENDANTS HUAWEI DEVICE USA INC., ET AL. MOTION
(DKT. 36) TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA**

I. INTRODUCTION

This lawsuit is between Huawei and AGIS, two Texas entities, and accuses smartphones and tablets manufactured and sold by Huawei. In its Reply, Huawei (1) resorts to an ad-hominem attack on AGIS's intentions and ignores both parties' significant ties to this District; (2) does not contend that relevant party evidence is inaccessible from its offices in this District; (3) does not contend that any Google evidence, to the extent such evidence is necessary for this dispute, is inaccessible from this District; and (4) improperly disregards the convenience of the Eastern District of Texas for AGIS's own witnesses. Because Huawei has not shown that transfer to the Northern District of California is clearly more convenient or in the interest of justice, Huawei's motion should be denied.

II. CONVENIENCE OF THE PARTIES AND WITNESSES AND COSTS OF ATTENDANCE FOR WILLING WITNESSES WEIGH AGAINST TRANSFER

First, this District is more convenient than the Northern District of California for *all* AGIS and AGIS Inc. witnesses. Dkt. 56 at 4-5; 11-13. Huawei's argument that the convenience of AGIS's expected witnesses is entitled to little weight because some of them live outside this District (Dkt. 74 at 3-4) is in direct contravention to Fifth Circuit law. "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *In re Volkswagen AG*, 371 F.3d 201, 204-05 (5th Cir. 2004). For example, the Northern District of California is significantly more inconvenient for both Mr. Beyer and Mr. Blackwell who would be required to travel an additional 1620 miles and 1054 miles, respectively, if this action was transferred. See Dkt. 56-2 at ¶ 5. Huawei also ignores that this District is convenient for Mr. Rice; not only is he beyond the subpoena power of the Northern District of California, but he has also agreed to travel to this District if called to testify

(Dkt 57-1 ¶ 20).¹ This District is also more convenient for AGIS’s technical expert. Dkt. 56-2 ¶ 8.

Huawei does not dispute that the Eastern District of Texas is more convenient than the Northern District of California for Mr. Armstrong or Mr. Sietsema. Instead, Huawei claims that Mr. Armstrong’s and Mr. Sietsema’s knowledge is “tethered to the irrelevant LifeRing and Assist products” which are “irrelevant to this case” Reply at 4. However, the LifeRing products are relevant to this case and AGIS identified these products in its Amended Complaint. Dkt. 20 at ¶ 14. AGIS also identified AGIS Inc.’s development documents, including source code, in its P.R. 3-2 disclosures. Huawei cannot credibly contend that the products of licensee AGIS Inc. are not relevant in this dispute. Instead, Huawei focuses on Patent Local Rule 3-1(f) which requires a **party** to identify “**its own apparatus. . .**” P.R. 3-1(f). Huawei twists this rule in a way that contravenes AGIS’s pleadings and contentions. AGIS Inc. is not a party to this case, and AGIS was not required to identify any AGIS Inc. products in its P.R. 3-1(f) disclosure.

Second, Huawei does not dispute that the majority of its own witnesses are located in China. Dkt. 36 at 4. The only witness identified by Huawei who is located in the Northern District of California, Yao Wang, stated unequivocally: “No design or manufacture of Huawei smartphone and tablet hardware occurs within the U.S., including the state of Texas.” Dkt. 36-3. Accordingly, because Huawei’s witnesses will likely come from outside the Northern District of California, transfer is not clearly more convenient. See *MHL Tek, LLC v. Nissan Motor Co.*, 2009 WL 440627, at *4 (E.D. Tex. Feb. 23, 2009)

Third, Huawei’s focus on Google is misplaced. Google is not a party to this case. Even if AGIS were to seek source code evidence from Google, as set forth below, Huawei has not

¹ Huawei’s reliance on *Groupchatter, LLC v. Itron, Inc.*, 2016 WL 2758480, at *4 (E.D. Tex. May 12, 2016) is inapposite because, in that case, the court determined that the willingness of witnesses to travel to Texas was entitled to little weight because those witnesses were located in the transferee district.

explained why testimony from Google witnesses in the Northern District of California would be necessary. Moreover, Google does not sell the Accused Products or the software implicated in the Accused Products. Rather, the Accused Products are sold in sales channels for use with third-party carriers, who include information on their websites that describe and provide technical support for the accused functionalities. Declaration of Vincent Rubino (“Rubino Decl.”), Ex. 13 at 2. Likewise, the location of the third-party carriers in or closer to this District weigh against transfer as set forth in AGIS’s response. Dkt. 56 at 10.

III. THE LOCATION OF THE DOCUMENTARY EVIDENCE DOES NOT JUSTIFY TRANSFER

Huawei admitted in a previous case in this District that “records and documents relating to development, sales, and marketing of its smartphones are equally accessible in Huawei USA’s Plano and California facilities.” Rubino Decl., Ex. 14 at ¶ 6. Accordingly, Huawei’s documentary evidence is in this District and transfer is not warranted. *Aloft Media, LLC v. Adobe Sys.*, 2008 WL 819956, at *3 (E.D. Tex. Mar. 25, 2008); see also *Odom v. Microsoft Corp.*, 596 F. Supp. 2d 995, 1000 (E.D. Tex. 2009). Whether Huawei’s documents are also available in California is irrelevant. Huawei’s argument that its “relevant documents, and those of key third-party witness Google, are located in NDCA and California” (Dkt. 74 at 5) is irrelevant because Huawei fails to specify what these documents are, or why they are important to the case, and does not contend that these documents are inaccessible from this District. *Invitrogen Corp., v. General Electric Co.*, 2009 WL 331891, at *2 (E.D. Tex. Feb. 9, 2009).

Regarding AGIS’s documents, Huawei’s assertion that “any evidence was clearly moved [to the Eastern District of Texas] in anticipation of litigation and is irrelevant to transfer,” (Dkt. 74 at 5) is incorrect. As AGIS explained in its response, an AGIS Inc. software developer, Mr. Armstrong, lives and works in this District under the direct supervision of Mr. Blackwell.

Dkt. 56 at 5. Mr. Armstrong is in possession of AGIS Inc.'s documents relating to the practice and licensing of the Patents-in-Suit.² Contrary to Huawei's bald assertions, Mr. Armstrong has had access to AGIS Inc.'s documents for many years and his decision to reside in this District was unrelated to this lawsuit. Dkt. 56-1 ¶¶ 15-16.

Regarding Google's documents, contrary to Huawei's implications, AGIS has not relied on any confidential Google code in its preliminary infringement contentions. Instead, AGIS's contentions identify publicly available source code, functionality that is within the public view. Huawei's argument that Google's documents, including source code, are "accessible" from the Northern District of California (Dkt. 36 at 6) is insufficient because Huawei has not set forth any evidence indicating that Google's documents and code would not be accessible Google locations in or closer to the Eastern District of Texas. *Aloft Media*, 2008 WL 819956, at *4. Accordingly, Huawei's reliance on Google does not necessitate transfer

Because AGIS's proof will come from records maintained in offices in this District, as well as from its consultant and technical expert located in this District, and because Huawei does not contend that its own or any third party documents are inaccessible from this District, this factor weighs against transfer.

IV. JUDICIAL ECONOMY AND THIS DISTRICT'S LOCALIZED INTEREST IN THIS DISPUTE WEIGHS AGAINST TRANSFER

The related AGIS Texas Cases which involve the same Patents-in-Suit and underlying technology, weighs against transfer because granting transfer would duplicate the proceedings. *RPost Holdings, Inc. v. StrongMail Sys., Inc.*, 2013 WL 4495119, at *5 (E.D. Tex. Aug. 19, 2013) (Gilstrap, J.). This is precisely the type of "wastefulness of time, energy and money that

² Huawei cites to Mr. Beyer's declaration from a prior case involving different parties and different patents, yet his declaration merely states that documents existed in Florida. Mr. Beyer did not state that documentary evidence was **not** located in Texas.

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